
TR-12, Fuel Related Rate Adjustment Policy:

SDDC Fuel Surcharge

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Publication of Changes to Surface Deployment and Distribution Command Policy TR-12, Fuel Related Rate Adjustment Policy

AGENCY: Department of the Army, DOD

ACTION: Notice and Request for Comments

SUMMARY: SDDC intends to modify SDDC Policy TR-12. Subject to comments, SDDC intends to implement the modified policy effective immediately. Modifications include the following: 1 SDDC may negotiate individual specialized fuel surcharge rates for BRAC movements and all 500,000 series negotiated tenders

DATES: Changes are effective immediately.

SUPPLEMENTARY INFORMATION (REVISED POLICY)

MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND (SDDC)

TRANSPORTATION AND TRAVEL

POLICY NO. TR-12

SUBJECT: Fuel-Related Adjustment (FRA) Policy

This version of Policy No. TR-12 supersedes all previous versions of TR-12, except to the extent that a previous version is explicitly referenced as the basis for payment in an agreement with SDDC.

A. Policy:

1. The following FRA or fuel surcharge policy applies to commercial carrier freight and personal property movements within the United States. SDDC will pay an FRA for certain types of domestic movements, as stated in paragraph E. SDDC will no longer pay an FRA on "Spot Bid" movements, regardless of mode. Nor will SDDC pay an FRA for any type of rail shipment. SDDC may negotiate individual specialized fuel surcharge rates for BRAC movements and all 500,000 series negotiated tenders. This policy provides the transportation industry, including individual carriers, economic adjustment and reasonable relief for unanticipated increases in diesel fuel prices. Carriers are urged to consider anticipated variation in fuel prices when submitting or supplementing rates during rate filing and/or bid submission periods.

2. Written provision will be made in SDDC regulations and solicited tender agreements for FRAs. At the sole discretion of the appropriate Contracting Officer, this policy may be applied to Federal Acquisitions Regulation (FAR) contracts. SDDC has

no obligation whatsoever to apply this policy to FAR contracts other than where the appropriate Contracting Officer determines that it shall apply.

B. Effective Date: Policy Changes are effective immediately.

C. Expiration Date: This policy is in effect until superseded or withdrawn in writing.

D. Definitions: The following definitions shall apply to terms used in this regulation.

1. Fuel Cost: The national average diesel fuel price published by the Department of Energy (DOE) Energy Information Administration (EIA). The diesel fuel prices published by the EIA may be found via the following sources:

- EIA Website: <http://www.eia.doe.gov/>
- EIA Weekly Petroleum Status Report
- EIA Hotline: (202) 586-6966

2. Pick up date: The date listed on the bill of lading indicating the calendar day on which the carrier takes possession of a given shipment.

3. Spot Bid: A flexible and responsive one-touch electronic resource that posts open shipments for bid by qualified carriers via the Internet. It is a viable acquisition alternative for procuring transportation services for one-time only, unique shipments of any or all modes. It supports SDDC Operations policy on overweight/over-dimensional shipments. Carriers bid on open shipments via the Internet, and bids remain sealed until the bid timeframe closes. It allows the Shipper to establish the bidding timeframe. Bids are used in place of standard tenders in the generation of a Bill of Lading. It also provides automatic open shipment notification for participating carriers. All submitted bids reflect an all-inclusive expense representing line haul, accessorial charges, and any additional expenses anticipated to support that particular shipment.

E. Application: SDDC shall pay an FRA in accordance with this policy on the following types of movements.

1. Personal Property Program:

- a. pickup occurs on or after 1 April 2007 for the domestic line haul portion of international movements and on or after 1 May 2007 for the line haul portion of domestic interstate and intrastate movements including Alaska and Hawaii, or the movement involves.
- b. the transportation charges applicable on domestic and international storage-in-transit shipments when such shipments are delivered or removed from the domestic storage-in transit warehouse.

2. Domestic Freight Program:

- a. the movement involves either:
- b. the domestic line haul portion of the carrier rate including Alaska and Hawaii, or
- c. the accessorial, Commercial Security Escort Vehicles (CSEV)

F. Determination of Adjustment Amount:

1. Formula:

- a. For applicable shipments, the FRA shall be paid based on a percentage of the line-haul rate. The line-haul rate does not include accessories unless specifically called for in the solicitation for the freight movement on which the FRA is based. Where the FRA applies, SDDC shall pay the carrier 1% of the line-haul rate, not including accessorial charges, for every increment of \$.10 by which the fuel cost exceeds \$2.50 at the time of pickup.

2. Determination of Fuel Cost at Time of Shipment:

- a. For applicable personal property program shipments, SDDC shall pay the FRA based on the fuel cost published on the first Monday of the month in which the shipment subject to the FRA is picked up. The fuel adjustment will automatically apply to shipments picked up on or after the 15th day of the month through the 14th day of the following month.
- b. For applicable domestic freight program shipments, SDDC shall pay the FRA based on the fuel cost published on the Monday of the week in which the shipment subject to the FRA was picked up.

G. Monitoring Diesel Fuel Prices: It is the responsibility of the carrier to monitor diesel fuel prices via one of the sources identified in this policy. The National Average diesel fuel price determined by the DOE, EIA will serve as the basis for determining the entitlement to an FRA. The National Average fuel price and the actual pickup date of shipment will determine if there is an entitlement to an adjustment and the amount of the adjustment. An adjustment is not applicable to any portion of transportation in which a surcharge or any other additional payment for fuel is already in existence.

Please see the table included to the Attachment to this policy for a demonstration of the percentage amount of the FRA for applicable shipments.

H. Billing Procedures: Carriers will clearly show fuel price adjustments on all paper and electronic commercial freight bills and Bills of Landing and invoices. The amount of any diesel fuel rate surcharge must be shown as a separate item on the carrier's invoice.

I. Flow-Down Clause: In accordance with Section 884 of the 2009 National Defense Authorization Act, any government paid fuel adjustment arising from a DOD transportation contract and funded by government funds, will be passed through to the person(s), who bears the cost of the fuel that the adjustment relates to. The Transportation Service Provider's (TSP's) have the responsibility to ensure the fuel surcharge payment goes to the cost bearer. The TSP shall insert a flow-down clause in all their transportation subcontracts and agreements with motor carriers, freight forwarders, or brokers who provide or arrange for motor carriage for a DOD authorized shipper to ensure the pass-through of the fuel surcharge payment goes to the cost bearer.

Note: Refer to ANNEX A, B, and C for detailed information on Non-FAR contracts and Household Good Domestic and International solicitations.

ATTACHMENT

The table below demonstrates the percentage of the line-haul rate SDDC will pay at a given fuel cost given a \$2.50 baseline. Should the baseline differ at any time, the same principle applies simply with a different starting point for calculating the percent adjustment. The table ends at \$4.40, but the same principle applies to fuel costs above that dollar amount.

| Cost per Gallon | Rate Adjustment % |
|-----------------|-------------------|
| 250.0 and below | 0 |
| 250.1 – 260.0 | 1 |
| 260.1 – 270.0 | 2 |
| 270.1 – 280.0 | 3 |
| 280.1 – 290.0 | 4 |
| 290.1 – 300.0 | 5 |
| 300.1 – 310.0 | 6 |
| 310.1 – 320.0 | 7 |
| 320.1 – 330.0 | 8 |
| 330.1 – 340.0 | 9 |
| 340.1 – 350.0 | 10 |
| 350.1 – 360.0 | 11 |
| 360.1 – 370.0 | 12 |
| 370.1 – 380.0 | 13 |
| 380.1 – 390.0 | 14 |
| 390.1 – 400.0 | 15 |
| 400.1 – 410.0 | 16 |
| 410.1 – 420.0 | 17 |
| 420.1 – 430.0 | 18 |
| 430.1 – 440.0 | 19 |

ADDRESS: Request for additional information may be sent by email to:
sddc.safb.g5polpgms@us.army.mil

SUBMIT ANY COMMENTS TO: Mrs. Isis Green
1 Soldier Way
Building 1900
Scott AFB, IL 62225

REGULATION FLEXIBILITY ACT

This action is not considered rulemaking within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601-612.

PAPERWORK REDUCTION ACT

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

ANNEX A: Non-FAR Contracts

Item:_____ Fuel-Related Adjustment for Motor Transportation Services

(a) Section 884 of the 2009 National Defense Authorization Act requires any government paid fuel rate adjustment, also known as, a fuel related surcharge (FS) arising from a DOD transportation contract and funded by government funds that the payment goes to the cost bearer of the fuel. The cost bearer is the person who actually incurred the cost of providing the fuel used for the motor transportation.

(b) The use of the terms motor carrier, freight forwarder, and broker in this Item have the same definition as those provided in 49 U.S.C. 13102.

(c) Each TSP must provide all drivers, owner operators, motor carriers, freight forwarders, or brokers notice that the cost bearer who transports cargo is entitled to any FS charged paid with government funds. The TSP must identify any shipment that is entitled to a federally funded FS payment.

(d) The TSP has the responsibility to ensure the FS payment goes to the cost bearer. The TSP shall insert a clause in all their transportation subcontracts and agreements with motor carriers, freight forwarders, or brokers who provide or arrange for motor carriage for a DOD, known as a flow-down clause, requiring the pass-through of the FS payment to the cost bearer. Include the flow-down clause in all contract tiers. The clause will require paying the FS to the cost bearer within thirty business days of the receipt of the FS payment. If there is more than one cost bearer, then the TSP pays each cost bearer his or her share of the FS payment based on the motor transportation miles provided by each cost bearer.

(e) The TSP must include and require a flow-down cause in all its contracts, subcontracts, and agreements with motor carriers, freight forwarders, or brokers who provide or arrange for motor carriage for DOD authorized shippers. The contracts, subcontracts and agreements must state the TSP has the sole responsibility and duty to ensure the FS payment goes to the cost bearer. All subcontractors and cost bearers must agree and acknowledge they have no privity of contract with the DOD or USG prior to accepting any shipments. The cost bearer must agree he or she has no right of legal recourse or legal standing to assert a claim against DOD or the USG for payment under 31 U.S.C. 3726. The clause will state all parties acknowledge that a BOL listing a DOD agency, military service, other USG agency, or other authorized DTS user, as the shipper, consignee, or consignor on the BOL makes the BOL a non-negotiable BOL. All parties agree they cannot delay delivery of cargo or demand the FS payment or any other payment as a precondition for timely delivery of a shipment.

(f) If a cost bearer or their representative brings a legal action against the DOD, a military service or other government entity for payment of the FS, then the TSP, who had the contract with DOD or other government entity, must indemnify the DOD or other federal entity for all associated legal and other costs.

(g) TSP's who fail to comply with the requirements of this provision may be subject to an administrative determination to place the TSP in non-use or suspension status.

ANNEX B: Household Goods Domestic

Item 16 Fuel Policy

(16A) – Fuel Surcharge – Line Haul

(16B) – Fuel Surcharge – Delivery from SIT

1. In circumstances where a TSP elects to subcontract for any portion of household goods transportation services provided by truck, the TSP shall be required to pass through any fuel-related adjustments paid by the government to the TSP to the person(s), corporation(s), household goods carriers, household goods freight forwarders, or other authorized TSP(s) that actually bear the fuel cost for any shipment(s), or any portion thereof, transported under this solicitation. TSPs shall insert a clause that meets the intent of this requirement in any subcontract with any motor carrier or household goods freight forwarder, or other person or entity at any tier authorized to transport household goods shipments.

(a) In no event shall this legal requirement be interpreted to provide any subcontractor lacking privity of contract with the U.S. Government with legal standing to assert a transportation claim for payment pursuant to 31 U.S.C. 3726 against SDDC, USTRANSCOM, or the Department of Defense due to a TSP's failure to insert the required clause in any subcontract, or the failure of a TSP to otherwise properly comply with the fuel-related surcharge pass-through requirement established by Section 884 of the 2009 National Defense Authorization Act.

(b) TSPs who fail to comply with the requirements of this provision may be subject to an administrative determination to place the TSP in non-use or suspension status.

NOTE: For the convenience of TSPs, a sample provision implementing this requirement is provided herein as follows:

TSP agrees that it shall be solely responsible to pass-through and pay subcontractor any fuel-related surcharge for the relevant portion of truck transportation services actually performed by subcontractor for fuel surcharge sums actually paid to TSP for DoD household goods shipment(s). TSP agrees that any fuel-related surcharge amount owed to subcontractor shall be paid immediately upon TSP's receipt of payment from DoD. TSP and subcontractor agree that in no event shall subcontractor be entitled to file a transportation claim directly with the U.S. government, or that the subcontractor shall have a cognizable or valid transportation claim for fuel-related surcharges directly against the government due to failure or refusal of a TSP to pay any subcontractor any lawfully owed fuel-related surcharge for fuel costs actually incurred by

ANNEX C: Household Goods International

Item 513 Fuel Surcharge (CONUS, Including Alaska and Hawaii)

(405) Fuel Surcharge

1. This provision shall apply only to any inland transportation segment within CONUS where a Fuel Surcharge applies to that segment of a shipment transported by truck.
2. In circumstances where a TSP elects to subcontract for any portion of household goods transportation services provided by truck, the TSP shall be required to pass through any fuel-related adjustments paid by the government to the TSP to the person(s), corporation(s), household goods carriers, household goods freight forwarders, or other authorized TSP(s) that actually bear the fuel cost for any shipment(s), or any portion thereof, transported under this tender. TSPs shall insert a clause that meets the intent of this requirement in any subcontract with any motor carrier or household goods freight forwarder, or other person or entity at any tier authorized to transport household goods shipments.
 - (a) In no event shall this legal requirement be interpreted to provide any subcontractor lacking privity of contract with the U.S. Government with legal standing to assert a transportation claim for payment pursuant to 31 U.S.C. 3726 against SDDC, USTRANSCOM, or the Department of Defense due to a TSP's failure to insert the required clause in any subcontract, or the failure of a TSP to otherwise properly comply with the fuel-related surcharge pass-through requirement established by Section 884 of the 2009 National Defense Authorization Act.
 - (b) TSPs who fail to comply with the requirements of this provision may be subject to an administrative determination to place the TSP in non-use or suspension status.

NOTE: For the convenience of TSPs, a sample provision implementing this requirement is provided herein as follows:

TSP agrees that it shall be solely responsible to pass-through and pay subcontractor any fuel-related surcharge for the relevant portion of truck transportation services actually performed by subcontractor for fuel surcharge sums actually paid to TSP for DoD household goods shipment(s). TSP agrees that any fuel-related surcharge amount owed to subcontractor shall be paid immediately upon TSP "s receipt of payment from DoD. TSP and subcontractor agree that in no event shall subcontractor be entitled to file a transportation claim directly with the U.S. government, or that the subcontractor shall have a cognizable or valid transportation claim for fuel-related surcharges directly against the government due to failure or refusal of a TSP to pay any subcontractor any lawfully owed fuel-related surcharge for fuel costs actually incurred by subcontractor.